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Vega Vargas, and the Proposed Class*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

KARLA ESTEFANÍA VEGA VARGAS,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

**CONSERVAS ANTONIO ALONSO, S.A.,
d/b/a CONSERVAS PALACIO DE
ORIENTE,** a foreign corporation,

Defendant.

CASE NO.: 7:17-cv-3967

CLASS ACTION

**COMPLAINT FOR EQUITABLE RELIEF
AND DAMAGES**

JURY TRIAL DEMANDED

1 Plaintiff, Karla Estefanía Vega Vargas (“Plaintiff”), individually, and on behalf of all
2 others similarly situated, by and through the undersigned counsel, and pursuant to all applicable
3 *Federal Rules of Civil Procedure*, hereby files this Class Action Complaint for Equitable Relief
4 and Damages against Defendant, Conservas Antonio Alonso, S.A. d/b/a Conservas Palacio De
5 Oriente (“Conservas Palacio de Oriente” or “Defendant”), and alleges the following:

6 **I. INTRODUCTION**

7 1. This is a consumer protection class action based on Defendant’s marketing,
8 advertising, labeling, packaging, distributing, and selling its Octopus (the “Product”), based on
9 false, deceptive, unfair, and/or misleading affirmative representations and omissions that are
10 likely to mislead reasonable consumers who purchased the Product, like Plaintiff and members of
11 the proposed Class, because the Product is not Octopus, but is actually Squid (also known as
12 Calamari), which is an inferior form of seafood that is cheaper than Octopus.

13 2. The Product’s representations and omissions deceive and mislead reasonable
14 consumers to believe that the Product is Octopus, when in reality, it is Squid, which is cheaper,
15 lower quality and more abundant than actual Octopus, which is a rarer and highly sought after
16 food delicacy than Squid.

17 3. However, despite this, Defendant caused the Product to be called Octopus because
18 Defendant profits far more by selling cheap Squid as Octopus, to the detriment of reasonable
19 consumers, like Plaintiff and members of the Class.

20 4. Plaintiff and members of the putative Class have suffered injury in fact, lost
21 money or property, and suffered economic damages as a result of Defendant’s wrongful conduct
22 in calling the Product Octopus, when it is really Squid.

23 5. Plaintiff brings this class action individually, and on behalf of all other similarly
24 situated purchasers of the Product, throughout the United States (“Class”)—or alternatively
25 throughout the State of California (“Sub-Class”)—during the Class Period (defined as the period
26 extending four-years prior to the date of filing this Complaint, up to and including the date that
27 Notice has been provided to the Class), seeking actual damages, statutory damages, punitive
28 damages, restitution, disgorgement, injunctive relief, and all other available remedies and relief

1 against Defendant, for their unlawful distribution, sales, marketing, and advertising of the Product
2 as being Octopus when it is really Squid.

3 6. Plaintiff expressly does not seek to impose or enforce any obligations, laws, rules,
4 or regulations on the Defendant above or beyond those required by federal law.

5 **II. JURISDICTION AND VENUE**

6 7. This Court has jurisdiction over the subject matter presented by this Complaint
7 because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub.
8 L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the
9 Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state
10 different from any defendant, and in which the matter in controversy exceeds in the aggregate the
11 sum of \$5,000,000.00, exclusive of interest and costs.

12 8. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiff alleges that the total claims of the
13 individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00, in the
14 aggregate, exclusive of interest and costs, and as set forth below, diversity of citizenship exists
15 under CAFA because Defendant is a foreign corporation based in Spain, while Plaintiff resides in
16 the State of California. This Court has personal jurisdiction over Defendant because Defendant
17 caused the Product to be sold in this judicial District, and Plaintiff’s claims against Defendant
18 accrued within this judicial District. Defendant has engaged in substantial activity within the
19 State of California, by, *inter alia*, having sold its Squid as being Octopus in California, and has,
20 therefore, subjected itself to the jurisdiction of the Courts of this State, pursuant to Cal. Civ.
21 Proc. Code § 410.10 (California’s Long-Arm Statute).

22 9. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), because Defendant
23 conduct business in, and may be found in, this judicial District, and a substantial part of the
24 events or omissions giving rise to Plaintiff’s claims occurred in this judicial District. The
25 Declaration of Benjamin M. Lopatin, pursuant to Civil Code § 1780(c) of the Consumers Legal
26 Remedies Act, Civil Code §§ 1750, *et seq.* (“CLRA”), regarding venue, is submitted concurrently
27 with this Complaint and is fully incorporated herein by reference.

1 **III. PARTIES**

2 10. Plaintiff, Karla Estefanía Vega Vargas, is an individual, over the age of 18, who
3 resides in the city of Salinas, Monterey County, State of California.

4 11. Plaintiff believes the allegations contained herein to be true. All allegations herein
5 are based on information and belief, and are reasonably likely to have evidentiary support after a
6 reasonable opportunity to conduct discovery.

7 12. At all times material hereto, Defendant was and is a foreign corporation, located
8 in Spain, with its Registered Office Address at: Conservas Antonio Alonso, S.A., Carretera Vigo-
9 Bayona, 127 – Baiona, Vigo, Pontevedra 36213, Spain, and is Registered in the Mercantile
10 Register of Pontevedra, dated 10/08/1978. Book of Companies 118, folio 77, sheet 903,
11 inscription 8^a.

12 13. Defendant sells the Product throughout the United States and has substantial
13 business relationships in the United States, by virtue of its partnerships, joint ventures, and/or
14 contractual relationships with United States based entities it does business with and/or that sell its
15 food products throughout the Country. Defendant has also engaged in substantial activity within
16 the State of California, by, *inter alia*, having unlawfully conspired or caused to have its Squid
17 sold as being Octopus in California, and has therefore, subjected itself to the jurisdiction of the
18 Courts of California, pursuant to Cal. Civ. Proc. Code § 410.10 (California’s Long-Arm Statute).

19 14. Plaintiff is informed and believes, and thereon alleges, that Defendant and its
20 employees, subsidiaries, affiliates and other related entities, were, agents, servants and employees
21 of each other, and, each was acting within the purpose and scope of said agency and employment.

22 15. Whenever referring to any acts or transactions of Defendant, such allegations shall
23 be deemed to mean that the principals, officers, directors, employees, agents, and/or
24 representatives of Defendant committed, knew of, performed, authorized, ratified and/or directed
25 such act or transaction for Defendant while engaged in the scope of their duties.

26 **IV. FACTUAL ALLEGATIONS**

27 16. Throughout the Class Period, Conservas Antonio Alonso, S.A. d/b/a Conservas
28 Palacio De Oriente (“Conservas Palacio de Oriente” or “Defendant”), has represented, advertised,

1 marketed, labeled, distributed, and sold Squid (also known as Calamari) but represented,
2 advertised, and labeled it as being Octopus (the “Product”), to deceive reasonable consumers into
3 paying more money for the Squid, believing it to be Octopus, which is much more expensive and
4 less-abundant than Squid.

5 17. Conservas Palacio de Oriente is a food product brand, which appears to cater to
6 predominantly Hispanic communities. Its food products are sold at small and large retailers,
7 including supermarkets, pharmacy chains, big box stores, and online throughout the United
8 States.

9 18. Conservas Palacio de Oriente has labeled and sold its Octopus Products as
10 Octopus (or pulpo in Spanish).

11 19. The word “Octopus” or “Pulpo” is prominently displayed on the label of the
12 Product. Nowhere on the box does it state that the Octopus Products contain Squid instead of
13 Octopus. This bait and switch is occurring, and has occurred throughout the Class Period,
14 causing harm and economic damages to purchasers of the Product.

15 The Product is Not Octopus

16 20. Octopus and Squid are both cephalopods, but are completely different species.

17 21. The scientific classification for Jumbo Squid, for example, is as follows:

18 Kingdom	Animalia
19 Phylum	Mollusca
20 Class	Cephalopoda
21 Order	Teuthida
22 Family	Ommastrephidae
23 Genus	Dosidicus
24 Species	Dosidicus gigas

25 22. The scientific classification of Octopus is as follows:

26 Kingdom	Animalia
27 Phylum	Mollusca
28 Class	Cephalopoda

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Order	Octopoda
Family	Octopodidae
Genus	Octopus
Species	Octopus vulgaris

1 23. In recent years, the cost of Octopus has increased rapidly as Octopus
2 populations have dwindled around the world due to over-fishing. In 2005, the European Union
3 imposed new restrictions on Octopus fishing because the Octopus might be at risk of dying out
4 from overfishing. Commission Takes Action to Safeguard Octopus Stocks, Oct. 12, 2005,
5 European Commission Press Release, *available at* [http://europa.eu/rapid/press-release_IP-05-](http://europa.eu/rapid/press-release_IP-05-1262_en.htm)
6 [1262_en.htm](http://europa.eu/rapid/press-release_IP-05-1262_en.htm).

7 24. In July 2014, it was reported that Octopus supplies had fallen, causing a
8 dramatic increase in the price of Octopus (“[a] 45 percent decline in supply is pushing prices of
9 octopus in Japan 50 to 60 percent higher than the same time period last year. In May, the volume
10 of frozen uncooked octopus sold at public wholesale auctions in Tokyo was down 16 percent,
11 while the price was up 30 percent from the same month in 2013”). Loew, Chris, *Japan Octopus*
12 *Prices Up On Short West African Supply*, July 17, 2014, SeafoodSource.com, *available at*
13 [https://www.seafoodsource.com/news/supply-trade/japan-octopus-prices-up-on-short-west-](https://www.seafoodsource.com/news/supply-trade/japan-octopus-prices-up-on-short-west-african-supply)
14 [african-supply](https://www.seafoodsource.com/news/supply-trade/japan-octopus-prices-up-on-short-west-african-supply).

15 25. At the same time that Octopus populations have been declining, Squid
16 populations have been thriving. In May 2013, Stanford biologist William Gilly gave a TED talk
17 in which he explained that the Squid is thriving due to its ability to adapt to changing ocean
18 conditions caused by global warming. *See TEDxStanford Highlights Breakthroughs in Research*
19 *and Creativity, Stanford-style*, May 13, 2013, Stanford News, *available at*
20 <http://news.stanford.edu/news/2013/may/tedx-at-stanford-051213.html>.

21 26. As a result of these developments, the cost of Octopus has risen dramatically
22 compared to the cost of Squid. In addition, due to similarities in texture, Squid can easily be
23 substituted for Octopus particularly when sold in a sauce like the Product.

24 27. Plaintiff is informed and believes that Conservas Palacio de Oriente,
25 intentionally replaced the Octopus in its Octopus Products with Squid as a cheap substitute
26 to save money because they knew an ordinary consumer would have trouble distinguishing the
27 difference.
28

1 28. Defendant have unlawfully profited through their marketing, advertising, labeling,
2 packaging, distributing, and selling of the Product as being Octopus on the front labeling of the
3 Product, because the statement is a false, deceptive, and an unfair affirmative representation
4 likely to mislead reasonable consumers who purchase the Product believing it to be Octopus,
5 when it is really Squid.

6 29. Accordingly, the advertising, marketing, and labeling for the Product is deceptive
7 and misleading because reasonable consumers are led to believe that the Product is of a higher
8 grade and quality than its true value because it is not Octopus, but rather Squid.

9 30. Defendant capitalize on their superior knowledge of the Octopus and Squid
10 industry, and consumers' inability to discern the truth about the Product from its label.

11 31. Defendant induce consumers to purchase the Product by representing that the
12 Product is Octopus.

13 32. Defendant, as a reputable supplier and distributor of Octopus, knew or should have
14 known that the Product is not Octopus.

15 33. Defendant knowingly and intentionally hid the fact that the Product contains Squid
16 so they could earn additional profit at the consumer's expense, like Plaintiff and members of the
17 Class, who believed they were purchasing Octopus when they purchased the Product.

18 34. Furthermore, in 2011 a Consumer Agency from the Spanish Government issued a
19 marketing suspension order to Defendant and fined them for the fraudulent use of Squid
20 (Dosidicus gigas) instead of Octopus.

21 **Plaintiff's Purchase of the Product**

22 35. Plaintiff has purchased the Product in this judicial District during the Class Period
23 (defined below), in reliance on the misleading labeling representations that the Product is
24 Octopus. Based on the Octopus claims on the Product's front label, Plaintiff believed that the
25 Product was Octopus when she purchased the Product, and this fact was the material reason for
26 Plaintiff purchasing the Product. Specifically, Plaintiff purchased the Product during December
27 2016, from a retail grocery store located in Monterey County, California.

1 36. However, subsequent to purchasing the Product, Plaintiff discovered that the
2 Product is not Octopus, but is rather Squid, which is less expensive and less quality than Octopus
3 that Plaintiff intended to purchase when she bought the Product.

4 37. Had the Product not claimed to be Octopus, Plaintiff would not have purchased it,
5 or alternatively, would not have purchased it at the premium price she did had she known it was
6 Squid.

7 38. Plaintiff would not have purchased the Product at all had Defendant not made the
8 Octopus claims, which she read on the label in making her purchase decision, and/or Plaintiff
9 would not have paid as much for the Product or purchased the Product at the price premium she
10 did. Plaintiff and members of the putative Class relied, to their detriment, on Defendant's material
11 statements regarding the Product being Octopus in making their decision to purchase the Product.

12 39. Reasonable consumers, like Plaintiff and members of the putative Class, must and
13 do rely on label representations and information on the Product's label in making their decision to
14 purchase the Product. Plaintiff and members of the putative Class were among the intended
15 recipients of Defendant's deceptive representations and/or omissions.

16 **Defendant's Unlawful Conduct During the Class Period is Ongoing**

17 40. Defendant's false, misleading, and deceptive misrepresentations and/or omissions
18 are likely to continue to deceive and mislead reasonable consumers, and the general public,
19 absent a Court ruling in this class action, as Defendant already deceived and misled Plaintiff and
20 members of the putative Class, and will continue to mislead consumers until it no longer is legally
21 able to.

22 41. Defendant made the deceptive representations and/or omissions related to the
23 Product with the intent to induce Plaintiff's and other members of the putative Class' purchase of
24 the Product.

25 42. Defendant's deceptive representations and/or omissions are material in that a
26 reasonable person would attach importance to such information and would be induced to act upon
27 such information in making purchase decisions.
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1 43. Thus, Plaintiff's and members of the putative Class' reliance upon Defendant's
2 misleading and deceptive representations and/or omissions has been met and may be presumed.

3 44. Furthermore, the materiality of those representations and/or omissions also
4 establishes causation between Defendant's conduct and the injuries sustained by Plaintiff and
5 members of the putative Class because they would not have purchased the Product if it did not
6 claim to be "Octopus," or alternatively, they would not have paid as much for it.

7 45. As an immediate, direct, and proximate result of Defendant's false, misleading,
8 and deceptive representations and/or omissions, Defendant injured Plaintiff and members of the
9 putative Class in that Plaintiff and members of the putative Class:

- 10 a. paid a sum of money for Product that were not as represented;
- 11 b. paid a premium price for Product that were not as represented;
- 12 c. were deprived the benefit of the bargain because the Product they purchased were
13 different from what Defendant warranted;
- 14 d. were deprived the benefit of the bargain because the Product they purchased had
15 less value than what Defendant represented;
- 16 e. did not receive the Product that measured up to their expectations as created by
17 Defendant;
- 18 f. received a Product that contained Squid, which was not the Octopus that was
19 represented by Defendant;
- 20 g. received a Product that was of a different quality than what Defendant promised;
21 and
- 22 h. were denied the benefit of truthful labels.

23 46. Had Defendant not made the false, misleading, and deceptive representations
24 and/or omissions, Plaintiff and members of the putative Class would not have purchased the
25 Product and thus would not have been injured.

26 47. Plaintiff and members of the putative Class all paid money for the Product.

27 48. However, Plaintiff and members of the putative Class did not obtain the full value
28 of the advertised Product due to Defendant's misrepresentations and/or omissions.

1 49. Plaintiff and members of the putative Class purchased, purchased more of, or paid
2 more for the Product than they would have, had they known the truth about the Product.

3 50. Plaintiff and putative Class members suffered economic damages as a result of
4 purchasing the valueless, worthless, and/or inferior Product in light of what they intended to
5 purchase.

6 51. Specifically, Plaintiff contends there is no market value for a misbranded Product,
7 so Plaintiff and members of the Class are entitled to reimbursement of the full purchase price for
8 each and every purchase of the Product during the Class Period.

9 52. Plaintiff and members of the putative Class are further entitled to declaratory and
10 equitable relief, including, but not limited to, injunctive relief, restitution, and/or disgorgement.
11 Plaintiff and members of the putative Class seek injunctive relief in the form of an Order
12 prohibiting Defendant from selling the Product claiming to be Octopus or Squid until it is sorted
13 out what is really in the Product currently on the local grocery store's shelves.

14 53. Plaintiff also seeks restitution for monies wrongfully obtained by Defendant and
15 disgorgement of all ill-gotten revenues and/or profits from the sale of the Product.

16 **V. CLASS ACTION ALLEGATIONS**

17 54. Plaintiff re-alleges and incorporates by reference the allegations set forth in each
18 of the preceding paragraphs of this Complaint.

19 55. This action is maintainable as a class action under Rule 23(a) and (b)(3) of the
20 *Federal Rules of Civil Procedure*.

21 56. Pursuant to *Federal Rule of Civil Procedure* 23 and Cal. Civil Code § 1781,
22 Plaintiff brings this class action and seeks certification of the claims and certain issues in this
23 action on behalf of a Class defined as:

24 **all persons in the United States who have purchased the**
25 **Product for personal use and not for resale, from the period**
26 **extending four-years prior to the date of filing this Complaint,**
27 **up to and including the date that Notice has been provided to**
28 **the Class.**

1 57. In the alternative to a nationwide Class, or as a Sub-Class, Plaintiff seeks
2 certification of the claims and certain issues in this action, pursuant to *Federal Rule of Civil*
3 *Procedure 23* and Cal. Civil Code § 1781, on behalf of a Class defined as:

4 **all persons in the State of California who have purchased the**
5 **Product for personal use and not for resale, from the period**
6 **extending four-years prior to the date of filing this Complaint,**
7 **up to and including the date that Notice has been provided to**
8 **the Class.**

9 58. Excluded from the Class are governmental entities, Defendant, any entity in which
10 Defendant have a controlling interest, and Defendant's officers, directors, affiliates, legal
11 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also, excluded
12 from the Class is any judge, justice, or judicial officer presiding over this matter and the members
13 of their immediate families and judicial staff.

14 59. Plaintiff reserves the right to amend the Class definition if further information and
15 discovery indicates that the Class definition should be narrowed, expanded or otherwise modified

16 60. Certification of Plaintiff's claims for class-wide treatment is appropriate because
17 Plaintiff can prove the elements of Plaintiff's claims on a class-wide basis using the same
18 evidence as would be used to prove those claims in individual actions alleging the same claims.

19 **Numerosity—Federal Rule of Civil Procedure 23(a)(1)**

20 61. The members of the Class are so numerous that it is impracticable to bring all
21 members of the Class before the Court, and thus, individual joinder of all class members is
22 impracticable. *See also* Cal. Civil Code § 1781(b)(1).

23 62. The precise number of members of the Class is unknown to Plaintiff, but it is clear
24 that the number greatly exceeds the number that would make joinder practicable, particularly
25 given Defendant's comprehensive distribution and sales network.

26 63. Members of the Class may be notified of the pendency of this action by
27 recognized, Court-approved notice dissemination methods, which may include U.S. Mail,
28 electronic mail, Internet postings, and/or published notice.

1 **Commonality and Predominance—Federal Rules of Civil Procedure 23(a)(2) and (b)(3)**

2 64. This action involves substantially similar common questions of law or fact, which
3 predominate over any questions affecting individual members of the Class. *See also* Cal. Civil
4 Code § 1781(b)(2).

5 65. All members of the Class were exposed to Defendant's deceptive and misleading
6 advertising and marketing claims and/or omissions alleged herein.

7 66. Furthermore, common questions of law of fact include:

- 8 a) Whether Defendant engaged in the conduct as alleged herein;
9 b) Whether Defendant's practices and representations related to the marketing,
10 labeling and sales of the Product was unfair, deceptive, fraudulent, and/or unlawful
11 in any respect, thereby violating Cal. Bus. & Prof. C. §§ 17200, *et seq.*;
12 c) Whether Defendant's practices and representations related to the marketing,
13 labeling and sales of the Product was unfair, deceptive and/or unlawful in any
14 respect, thereby violating Cal. Bus. & Prof. C. §§ 17500, *et seq.*;
15 d) Whether Defendant violated Cal. Civ. C. §§ 1750, *et seq.* with their practices and
16 representations related to the marketing, labeling and sales of the Product;
17 e) Whether Plaintiff and the other members of the Class are entitled to actual,
18 statutory, or other forms of damages, and/or other monetary relief; and
19 f) Whether Plaintiff and the other members of the Class are entitled to declaratory
20 and equitable relief, including but not limited to injunctive relief, restitution, and
21 disgorgement.

22 67. Defendant engaged in a common course of conduct in contravention of the laws
23 Plaintiff seeks to enforce, individually and on behalf of the other members of the Class.

24 68. Similar or identical statutory and common law violations, business practices, and
25 injuries are involved. Individual questions, if any, pale by comparison, in both quality and
26 quantity, to the numerous common questions that dominate this action. Moreover, the common
27 questions will yield common answers.

28 **Typicality—Federal Rule of Civil Procedure 23(a)(3)**

1 69. Plaintiff's claims or defenses are typical of the claims or defenses of the members
2 of the Class. *See also* Cal. Civil Code § 1781(b)(3).

3 70. Plaintiff and members of the Class were comparably injured through Defendant's
4 uniform misconduct described herein, and there are no defenses available to Defendant that are
5 unique to Plaintiff.

6 **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4)**

7 71. Plaintiff will fairly and adequately protect the interests of the Class. *See also* Cal.
8 Civil Code § 1781(b)(4).

9 72. Plaintiff is an adequate representative of the Class because, Plaintiff's interests
10 align with, and do not conflict with, the interests of members of the Class that Plaintiff seeks to
11 represent.

12 73. The Class' interests will be fairly and adequately protected by Plaintiff because
13 Plaintiff has retained counsel competent and experienced in consumer protection and complex
14 class action litigation, and Plaintiff will prosecute this action diligently and vigorously. Plaintiff's
15 counsel has represented consumers in a variety of class actions where they have sought to protect
16 consumers from fraudulent and deceptive practices.

17 **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2)**

18 74. Defendant have acted or refused to act on grounds generally applicable to Plaintiff
19 and the other members of the Class, thereby making appropriate final injunctive relief and
20 declaratory relief, as described herein, with respect to the members of the Class as a whole.

21 **Predominance —Federal Rule of Civil Procedure 23(b)(3)**

22 75. As set forth in detail herein, common issues of fact and law predominate because
23 all of Plaintiff's claims are based on a uniform false and misleading advertising message which
24 all class members were necessarily exposed to.

25 **Superiority—Federal Rule of Civil Procedure 23(b)(3)**

26 76. A class action is superior to any other available means for the fair and efficient
27 adjudication of this controversy, and no unusual difficulties are likely to be encountered in the
28 management of this class action.

1 77. The damages or other financial detriment suffered by Plaintiff and the other
2 members of the Class are relatively small compared to the burden and expense that would be
3 required to individually litigate their claims against Defendant, so it would be impracticable for
4 members of the Class to individually seek redress for Defendant's wrongful conduct.

5 78. Even if the members of the Class could afford individual litigation, the court
6 system could not.

7 79. Individualized litigation creates a potential for inconsistent or contradictory
8 judgments, and increases the delay and expense to all parties and the court system. By contrast,
9 the class action device presents far fewer management difficulties and provides the benefits of
10 single adjudication, economy of scale, and comprehensive supervision by a single court.

11 80. Given the similar nature of the members of the Class' claims and the absence of
12 material or dispositive differences in laws upon which the claims are based, the Class will be
13 easily managed by the Court and the parties.

14 **VI. CAUSES OF ACTION**

15 **COUNT I**

16 ***Violation of California Business & Professions Code §§ 17500 et seq.***

17 ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant)***

18 81. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in
19 the preceding paragraphs one (1) through eighty (80) of this Complaint as if fully set forth herein
20 verbatim.

21 82. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,
22 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the
23 Product's front packaging and labeling. However, the Product is not Octopus because it is made
24 with Squid, an inferior form of seafood.

25 83. Defendant's advertisements, mislabeling and packaging and marketing
26 representations are misleading, untrue, and likely to deceive reasonable consumers.

27 84. Defendant engaged in its advertising, mislabeling and packaging and marketing
28 campaign with intent to directly induce customers to purchase the Product based on false claims.

1 85. In violation of California Business and Professions Code, sections 17500, *et seq.*,
2 known as California's False Advertising Law ("FAL"), Defendant disseminated, or caused to be
3 disseminated, the deceptive Product's labeling and advertising representations.

4 86. Defendant's labeling and advertising representations for the Product is by its very
5 nature unfair, deceptive and/or unlawful within the meaning of Cal. Bus. & Prof. Code §§ 17500
6 *et seq.*

7 87. According to Cal. Bus. & Prof. Code § 17505: "No person shall state, in an
8 advertisement of his goods, that he is a producer, manufacturer, processor, wholesaler, or
9 importer, or that he owns or controls a factory or other source of supply of goods when such is
10 not the fact, and no person shall in any other manner misrepresent the character, extent, volume,
11 or type of his business."

12 88. Under the FAL, "person" includes any individual, partnership, firm, association, or
13 corporation." Cal. Bus. & Prof. Code § 17506.

14 89. The representations were at all material times hereto likely to deceive reasonable
15 consumers, including Plaintiff and members of the Class.

16 90. Defendant violated Cal. Bus. & Prof. Code §§ 17500 *et seq.*, in making and
17 disseminating the deceptive representations alleged herein.

18 91. Defendant knew or should have known that the representations were false,
19 misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the
20 Class.

21 92. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and
22 similarly situated purchasers of the Product have suffered economic damages.

23 93. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of
24 improperly advertising the Product as described herein.

25 94. Plaintiff would not have purchased the Product but for Defendant's misleading
26 statements about the Product.

27 95. Pursuant to Bus. & Prof. Code § 17535, Plaintiff, individually and on behalf of all
28 similarly situated purchasers, seeks an order of this Court requiring Defendant to restore to

1 purchasers of the Product all monies that may have been acquired by Defendant as a result of
2 such false, unfair, deceptive and/or unlawful acts or practices. Plaintiff and members of the Class
3 seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten
4 revenues and/or profits, injunctive relief enjoining Defendant from disseminating its untrue and
5 misleading statements, and other relief allowable under California Business & Professions Code
6 Section 17535.

7 96. Furthermore, as a result of Defendant's violations of the False Advertising Law,
8 Cal. Bus. & Prof. Code §§ 17500, *et seq.*, Plaintiff and similarly situated purchasers of the
9 Product are entitled to restitution for out-of-pocket expenses and economic harm.

10 97. Pursuant to Civil Code § 3287(a), Plaintiff and similarly situated purchasers of the
11 Product are further entitled to pre-judgment interest as a direct and proximate result of
12 Defendant's wrongful conduct. The amount on which interest is to be calculated is a sum certain
13 and capable of calculation, and Plaintiff and similarly situated purchasers of the Product are
14 entitled to interest in an amount according to proof.

15 **COUNT II**

16 ***Violation of the Unfair and Fraudulent Prongs of Cal. Bus. & Prof. Code §§ 17200, et seq.***

17 ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant)***

18 98. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in
19 the preceding paragraphs one (1) through eighty (80) of this Complaint as if fully set forth herein
20 verbatim.

21 99. This cause of action is brought on behalf of Plaintiff and members of the general
22 public, pursuant to California Business and Professions Code, sections 17200 *et seq.*, known as
23 California's Unfair Competition Law ("UCL"), which provides that "unfair competition shall
24 mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive,
25 untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section
26 17500) as Part 3 of Division 7 of the Business and Professions Code."

27 100. According to Cal. Bus. & Prof. Code § 17500: "It is unlawful for any person, firm,
28 corporation or association, or any employee thereof with intent directly or indirectly to dispose of

1 real or personal property or to perform services, professional or otherwise, or anything of any
2 nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or
3 disseminate or cause to be made or disseminated before the public in this state, or to make or
4 disseminate or cause to be made or disseminated from this state before the public in any state, in
5 any newspaper or other publication, or any advertising device, or by public outcry or
6 proclamation, or in any other manner or means whatever, including over the Internet, any
7 statement, concerning that real or personal property or those services, professional or otherwise,
8 or concerning any circumstance or matter of fact connected with the proposed performance or
9 disposition thereof, which is untrue or misleading, and which is known, or which by the exercise
10 of reasonable care should be known, to be untrue or misleading, or for any person, firm, or
11 corporation to so make or disseminate or cause to be so made or disseminated any such statement
12 as part of a plan or scheme with the intent not to sell that personal property or those services,
13 professional or otherwise, so advertised at the price stated therein, or as so advertised.”

14 101. In its marketing, advertising, labeling and packaging of the Product, Defendant
15 makes false and misleading statements regarding the uses and benefits of the Product.

16 102. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,
17 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the
18 Product’s front packaging and labeling. However, the Product is not Octopus because it is made
19 with an inferior Squid.

20 103. The misrepresentations Defendant makes about the Product constitutes an unfair
21 and fraudulent business practice within the meaning of California Business & Professions Code
22 section 17200, *et seq.*

23 104. Defendant committed “unfair” and/or “fraudulent” business acts or practices by,
24 among other things: (1) engaging in conduct where the utility of such conduct, if any, is
25 outweighed by the gravity of the consequences to Plaintiff and members of the Class; (2)
26 engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially
27 injurious to Plaintiff and members of the Class; and (3) engaging in conduct that undermines or
28 violates the spirit or intent of the consumer protection laws alleged herein.

1 105. As detailed above, Defendant's unfair and/or fraudulent practices include
2 disseminating false and/or misleading representations regarding the Product.

3 106. Defendant is aware that the claims it made about the Product is false, misleading,
4 and likely to deceive reasonable consumers.

5 107. Plaintiff would not have purchased the Product but for Defendant's misleading
6 statements about the Product.

7 108. Plaintiff was injured in fact and lost money as a result of Defendant's conduct.

8 109. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact
9 and has lost money or property as a result of Defendant's actions as set forth herein.

10 110. Defendant's business practices, as alleged herein, are unfair because: (1) the injury
11 to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to
12 consumers or competition; and (3) consumers could not reasonably have avoided the information
13 because Defendant intentionally misled the consuming public by means of the claims made with
14 respect to the Product as set forth herein.

15 111. Defendant's business practices as alleged herein are fraudulent because they are
16 likely to deceive customers into believing the Product has characteristics, uses and benefits they
17 do not have.

18 112. In addition, Defendant's use of various forms of advertising media to advertise,
19 including the Product's labeling, call attention to, or give publicity to, the sale of goods or
20 merchandise which are not as represented in any manner, which constitutes unfair competition,
21 unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the
22 meaning of Business & Professions Code sections 17200, *et seq.*

23 113. Defendant's wrongful business practices constituted a continuing course of
24 conduct of unfair competition since Defendant is marketing and selling the Product in a manner
25 likely to deceive the public.

26 114. Defendant has peddled its misrepresentations through advertising, including the
27 Product's labeling.

115. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

116. Plaintiff and the putative members of the Class were misled into purchasing the Product by Defendant's deceptive and fraudulent conduct as alleged herein.

117. Defendant had an improper motive (profit before accurate marketing) in its practices related to the deceptive labeling and advertising of the Product, as set forth above.

118. The use of such unfair and fraudulent business acts and practices was under the sole control of Defendant, and was deceptively hidden from members of the general public in Defendant's marketing, advertising and labeling of the Product.

119. As purchasers and consumers of Defendant's Product, and as members of the general public who purchased and consumed the Product, Plaintiff and the Class are entitled to bring this class action seeking all available remedies under the UCL.

120. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually, and on behalf of the Class, seeks an order of this Court for injunctive relief and disgorging and restoring all monies that have been acquired by Defendant as a result of Defendant's business acts or practices described herein. Plaintiff, the Class, and the general public may be irreparably harmed or denied an effective and complete remedy in the absence of such an order.

121. As a result of Defendant's violations of the UCL, Plaintiff and the Class are entitled to restitution for out-of-pocket expenses and economic harm.

122. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-judgment interest as a direct and proximate result of Defendant's unfair and fraudulent conduct. The amount on which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff and the Class are entitled to interest in an amount according to proof.

COUNT III

Violation of the Unlawful Prong of Cal. Bus. & Prof. Code §§ 17200, et seq.

(Brought on behalf of Plaintiff and the Proposed Class Against Defendant)

1 123. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in
2 the preceding paragraphs one (1) through eighty (80) of this Complaint as if fully set forth herein
3 verbatim.

4 124. This cause of action is brought on behalf of Plaintiff and members of the Class
5 pursuant to California Business and Professions Code, sections 17200 *et seq.*, known as
6 California's Unfair Competition Law ("UCL"), which provides that "unfair competition shall
7 mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive,
8 untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section
9 17500) as Part 3 of Division 7 of the Business and Professions Code."

10 125. According to Cal. Bus. & Prof. Code § 17500: "It is unlawful for any person, firm,
11 corporation or association, or any employee thereof with intent directly or indirectly to dispose of
12 real or personal property or to perform services, professional or otherwise, or anything of any
13 nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or
14 disseminate or cause to be made or disseminated before the public in this state, or to make or
15 disseminate or cause to be made or disseminated from this state before the public in any state, in
16 any newspaper or other publication, or any advertising device, or by public outcry or
17 proclamation, or in any other manner or means whatever, including over the Internet, any
18 statement, concerning that real or personal property or those services, professional or otherwise,
19 or concerning any circumstance or matter of fact connected with the proposed performance or
20 disposition thereof, which is untrue or misleading, and which is known, or which by the exercise
21 of reasonable care should be known, to be untrue or misleading, or for any person, firm, or
22 corporation to so make or disseminate or cause to be so made or disseminated any such statement
23 as part of a plan or scheme with the intent not to sell that personal property or those services,
24 professional or otherwise, so advertised at the price stated therein, or as so advertised."

25 126. As detailed above, Defendant's unlawful practices include disseminating false
26 and/or misleading representations about the Product.

27 127. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,
28 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the

1 Product's front packaging and labeling. However, the Product is not Octopus because it is made
2 with an inferior Squid.

3 128. Plaintiff would not have purchased the Product, but for Defendant's misleading
4 statements about the Product.

5 129. Plaintiff was injured in fact and lost money as a result of Defendant's conduct.

6 130. Plaintiff paid for the Product, but did not receive what he reasonably expected.

7 131. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact
8 and has lost money or property as a result of Defendant's actions as set forth herein.

9 132. Defendant's business practices, as alleged herein, are unfair because: (1) the injury
10 to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to
11 consumers or competition; and (3) consumers could not reasonably have avoided the information
12 because Defendant intentionally misled the consuming public by means of the claims made with
13 respect to the Product as set forth herein.

14 133. In its marketing and advertising, Defendant makes false and misleading statements
15 regarding the uses and benefits of the Product.

16 134. Such marketing, advertising and sale of the Product by Defendant is unlawful
17 because (1) they are violating sections 1770(a)(5), 1770(a)(7) and 1770(a)(9) of the CLRA,
18 California Civil Code section 1750, *et seq.*; and (2) they are violating the FAL, California
19 Business & Professions Code section 17500, *et seq.*

20 135. Because Defendant's business conduct in advertising, marketing and selling the
21 Product using false and misleading statements, in violation of the CLRA, FAL, and/or other
22 federal and state laws or regulations, it constitutes a per se violation of the "unlawful" prong of
23 the UCL.

24 136. As purchasers and consumers of Defendant's Product, and as members of the
25 general public who purchased and used the Product, Plaintiff and the Class are entitled to and
26 bring this class action seeking all available remedies under the UCL.

27 137. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually and on
28 behalf of the Class, seeks an order of this Court for injunctive relief and disgorging and restoring

1 all monies that may have been acquired by Defendant as a result of such unlawful business acts or
2 practices. Plaintiff, the Class and the general public may be irreparably harmed and/or denied an
3 effective and complete remedy in the absence of such an order.

4 138. As a result of Defendant's violations of the UCL, Plaintiff and the Class are
5 entitled to restitution for out-of-pocket expenses and economic harm.

6 139. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-
7 judgment interest as a direct and proximate result of Defendant's unlawful business conduct. The
8 amount on which interest is to be calculated is a sum certain and capable of calculation, and
9 Plaintiff and the Class are entitled to interest in an amount according to proof.

10 **COUNT IV**

11 ***Violation of the California Consumers Legal Remedies Act – Cal. Civ. Code §§ 1750, et seq.***

12 ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant)***

13 140. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in
14 the preceding paragraphs one (1) through eighty (80) of this Complaint as if fully set forth herein
15 verbatim.

16 141. This cause of action is brought pursuant to California's Consumers Legal
17 Remedies Act, California Civil Code, sections 1750 *et seq.* ("CLRA").

18 142. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,
19 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the
20 Product's front packaging and labeling. However, the Product is not Octopus because it is made
21 with an inferior Squid.

22 143. This cause of action seeks monetary damages and injunctive relief pursuant to
23 California Civil Code § 1782.

24 144. Defendant's actions, representations, and conduct have violated the CLRA,
25 because they extend to transactions that are intended to result, or that have resulted, in the sale of
26 goods to consumers.

27 145. Under the CLRA, "Person" means an individual, partnership, corporation, limited
28 liability company, association, or other group, however organized." Cal. Civil Code § 1761(c).

1 146. Plaintiff and all members of the Class are “consumers” as that term is defined by
2 the CLRA in California Civil Code § 1761(d).

3 147. Defendant sold the Product, which is a “good” within the meaning of California
4 Civil Code § 1761(a), to Plaintiff and other members of the Class during the Class Period.

5 148. Plaintiff is an individual who purchased the Product for personal use.

6 149. The purchases of the Product by Plaintiff and purchasers of the Product were and
7 are “transactions” within the meaning of Civil Code §1761(e).

8 150. Defendant’s marketing, labeling and advertising and sales of the Product violated
9 the CLRA in at least the following respects as set forth in detail above:

- 10 a. In violation of Civil Code §1770(a)(5), Defendant represented that the Product
11 has characteristics, ingredients, uses, and benefits which it does not have;
- 12 b. In violation of Civil Code §1770(a)(7), Defendant represented that the Product
13 is of a particular standard, quality, or grade, which it is not;
- 14 c. In violation of Civil Code §1770(a)(9), Defendant advertised the Product with
15 an intent not to sell the Product as advertised; and
- 16 d. In violation of Civil Code §1770(a)(16), Defendant represented that the subject
17 of the sale of the Product has been supplied in accordance with a prior
18 representation when it has not.

19 151. Defendant knew or should have known about the Product’s misrepresentation and
20 omissions.

21 152. Defendant’s actions as described herein were done with conscious disregard of
22 Plaintiff’s rights, and Defendant was wanton and malicious in its concealment of same.

23 153. Defendant’s wrongful business practices constitute a continuing course of conduct
24 in violation of the CLRA.

25 154. Plaintiff and other members of the putative Class have suffered injury in fact and
26 have lost money as a result of Defendant’s misrepresentations.

27 155. Plaintiff seeks an award of restitution and actual damages in accordance with the
28 provisions of the CLRA.

156. Plaintiff also seeks equitable relief in the form of an order for injunctive relief:

- a) Requiring Defendant to make full restitution of all monies wrongfully obtained as a result of the conduct described above;
- b) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct described above; and
- c) Enjoining Defendant from engaging, using, or employing its advertising and marketing tactics to sell the Product, as described above.

157. Pursuant to the notice requirements under the CLRA, on or about June 7, 2017, Plaintiff sent Defendant a letter via U.S.P.S. Certified Mail, notifying Defendant in writing of the particular violations of the CLRA, and demanding that Defendant take certain corrective actions within the mandated thirty (30) day time period. In the event Defendant fails to adequately respond within the thirty (30) day time-period, Plaintiff intends to amend this Complaint to include a request for punitive damages and statutory damages pursuant to the CLRA.

158. Pursuant to the CLRA, Plaintiff separately seeks, and is entitled to, costs, attorney's fees, and any other applicable relief allowable under the CLRA.

COUNT V

Negligent Misrepresentation

(Brought on behalf of Plaintiff and the Proposed Class Against Defendant)

159. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the preceding paragraphs one (1) through eighty (80) of this Complaint as if fully set forth herein verbatim.

160. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed, distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the Product's front packaging and labeling. The Product is not Octopus but rather, is inferior Squid.

161. Defendant had no reasonable grounds for believing its representations were true.

162. Defendant should have known about the Product's misrepresentations.

163. Throughout or during the Class Period, Defendant, Conservas Palacio de Oriente, knew or should have known that it was representing, stating, advertising, packaging, marketing,

1 distributing, and/or selling Squid in the Product, and not Octopus, like it had been representing to
2 consumers, like Plaintiff and members of the Class, during the Class Period.

3 164. In making these representations to Plaintiff and the Class, Defendant, Conservas
4 Palacio de Oriente, intended to induce Plaintiff and the Class to purchase the Product.

5 165. At all times herein, Plaintiff and the Class were unaware of the falsity of
6 Defendant, Conservas Palacio de Oriente's statement that the Product is Octopus.

7 166. Plaintiff and the Class reasonably acted in response to the statements made by
8 Defendant, Conservas Palacio de Oriente, when they purchased the Product.

9 167. As a direct and proximate result of Defendant's misrepresentation regarding the
10 Product, Plaintiff and Class members purchased the Product, to their detriment.

11 168. Accordingly, Plaintiff and the Class have suffered economic damages as a result of
12 Defendant's misrepresentation, in an amount to be determined at trial.

13 **VII. PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated, prays
15 for a judgment and relief on all causes of action as follows:

16 A. For an order certifying that the action may be maintained as a class action,
17 certifying Plaintiff as Class representative, and designating Plaintiff's attorneys as Class counsel.

18 B. For an award of equitable relief as follows:

19 i. Enjoining Defendant from making any Octopus claims for the Product found to
20 violate the UCL, FAL, or CLRA as set forth above;

21 ii. Requiring Defendant to make full restitution of all monies wrongfully obtained as
22 a result of the conduct as set forth above;

23 iii. Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct as
24 set forth above.

25 C. For actual damages in an amount to be determined at trial.

26 D. For punitive damages in an amount to be determined at trial, pursuant to Cal. Civil
27 Code § 1780(a)(4).
28

1 E. For an award of attorneys' fees pursuant to, *inter alia*, Cal. Civil Code § 1780(d),
2 and California Code of Civil Procedure § 1021.5.

3 F. For an award of costs.

4 G. For such further relief this Court deems just, appropriate, or proper.

5 H. For pre- and post-judgment interest on any amounts awarded.

6 **VIII. JURY DEMAND**

7 Plaintiff respectfully demands a trial by jury on all issues so triable.

8
9 **DATED: July 14, 2017**

Respectfully Submitted By,

10 /s/ Benjamin M. Lopatin

Benjamin M. Lopatin (Cal. Bar No. 281730)

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(To be Admitted *Pro Hac Vice*)

21 *Counsel for Plaintiff Karla Estefania Vega Vargas*
22 *and the Proposed Class*